

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Implement the
Commission's Procurement Incentive Framework and to
Examine the Integration of Greenhouse Gas Emissions
Standards into Procurement Policies.

R. 06-04-009

**PRE-PREHEARING CONFERENCE COMMENTS OF
THE ALLIANCE FOR RETAIL ENERGY MARKETS**

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November 15, 2006

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Pursuant to the Administrative Law Judge's Ruling and Notice of Prehearing Conference dated November 1, 2006 ("ALJ's Ruling"), the Alliance for Retail Energy Markets (AReM) respectfully submits the following pre-prehearing conference comments.¹

The ALJ's Ruling provides that this Phase 2 of this proceeding will focus on implementing the load-based cap on greenhouse gas ("GHG") emissions for load-serving entities ("LSEs") adopted in Decision ("D.") 06-02-032 and coordination of the Commission's implementation efforts with the California Air Resources Board ("CARB"). The ALJ's Ruling also identifies issues to be addressed in Phase 2 and solicits pre-prehearing conference comments on the proposed scoping, scheduling and issues set forth in the ruling.

AReM believes that the issues listed in the ALJ's Ruling are properly within the scope of the proceeding. Additionally, AReM believes that the organization of the proceeding around the five program elements identified in the ALJ's Ruling makes sense and will facilitate the resolution of issues. The five major program elements identified in the ALJ's Ruling are: (1) reporting requirements; (2) baseline development and allowance allocation; (3) design of cap

¹ AReM is a California mutual benefit corporation whose members are electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of any individual member of AReM or the affiliates of its members with respect to the issues addressed herein.

structure and ratcheting; (4) flexible compliance mechanisms; (5) modeling to support the evaluation of cost effectiveness of different implementation options. AReM plans on actively participating in the proceedings for all of these five program elements, and anticipates that evidentiary hearings may be required for evaluating the cost effectiveness of the different implementation options. AReM believes that workshops will be adequate for purposes of resolving issues related to the other program elements. AReM will comment further on the scheduling of proceedings at the prehearing conference.

Among the issues identified in the ALJ's Ruling, the most critical from AReM's perspective is addressing how energy service providers ("ESPs") should be included under the load-based cap incentive framework. In D.06-02-032, the Commission stated with respect to ESPs, "Consistent with the approach taken in D.05-11-025, during the implementation phase we will determine which terms and conditions of GHG reduction requirements and associated caps should be imposed on ESPs, CCAs, and IOUs in a similar fashion, and those where differences may be appropriate."² AReM concurs that the approach in this proceeding should indeed be consistent with that taken by the Commission in D.05-11-025, the Commission's decision establishing the parameters for the participation of ESPs and community choice aggregators ("CCAs") in the Renewables Portfolio Standard ("RPS") program. In that decision, the Commission held:

This Commission has less overall control over how ESPs and CCAs operate than we do over how utilities operate. Also, to the extent we consider ESP and CCA operations, our concerns about their operations differ somewhat from our concerns about the operations of the investor-owned utilities. In the context of the RPS program, our primary concern is to ensure that ESPs and CCAs do in fact reach the goal of 20% renewable energy by 2010.³ We are, however, somewhat less concerned about the details of how they get there.

² D.06-02-032, pp. 25-26; *see also* Ordering paragraph 4.

³ The annual procurement targets are a means of ensuring that goal is reached in a relatively orderly fashion.

Therefore, we do not believe it is reasonable to require these entities to be subject to the exact same steps for RPS implementation purposes as the utilities we fully regulate. We also do not believe that it is necessarily reasonable to subject ESPs and CCAs to the same RPS process requirements as each other, simply because they are not utilities. A CCA, for example, will likely be answerable to the political authorities in the community in which it is operating, in addition to its customers. Unlike an IOU, an ESP faces more financial challenges to the recovery of costs from its customers. Thus, we are sensitive to the particular requirements and pressures of each type of entity and do not necessarily want to impose a “one size fits all” RPS regulatory scheme.⁴

It is critical that the Commission keep the differences between the investor-owned utilities (“IOUs”) that it regulates as public utilities and ESPs clearly in mind while developing the design and rules for implementing the load-based cap. While AReM cannot anticipate at this time all of the areas where different rules or approaches will be needed for IOUs and ESPs, based on its experience with the RPS and the GHG emissions performance standard, AReM anticipates that they will include, among others, the calculation and baseline amounts for ESPs, compliance procedures and reporting requirements.

For instance, using 1990 as the baseline year for measuring the GHG emissions of load serving entities (“LSEs”) as provided in D.06-02-032 is problematic for ESPs in that no such entities were in existence in California at that time. Additionally, since ESPs are not required to submit procurement plans or proposed supply contracts to the Commission for approval, an ESP compliance demonstration process that is outside the procurement planning framework under which the IOUs operate will need to be established.

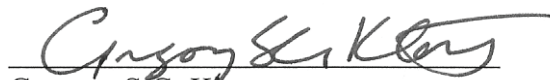
Another critical area from AReM’s perspective is flexible compliance. As with the RPS program, ESPs should be allowed at least the same flexible compliance tools and options as the IOUs. Moreover, depending on the specific requirements and procedures adopted for the IOUs, it may be necessary or appropriate to adopt different requirements or procedures for ESPs that allow such entities more flexibility. While some parties may object to ESPs being treated

⁴ D.05-11-025, pp. 11-12, *as modified by* D.06-03-016; *see also* pp. 4-6.

somewhat differently than the IOUs for some purposes, the Commission's primary concern should be that ESPs actually are able to meet the GHG emission reduction targets set by the CARB, rather than how they get there.

AReM looks forward to working with the Commission and the parties on the design and implementation of the load-based cap in Phase 2 of this proceeding. AReM thanks the Commission for its consideration of these pre-prehearing conference comments.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing document on all parties of record in the above captioned proceedings by serving an electronic copy on their email addresses of record and, for those parties without an email address of record, by mailing a properly addressed copy by first-class mail with postage prepaid to each party on the Commission's official service list for this proceeding.

This Certificate of Service is executed on November 15, 2006, at Woodland Hills, California.



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